

#### § 4.202

*Superintendent* means the BIA Superintendent or other BIA officer having jurisdiction over an estate, including area field representatives or one holding equivalent authority.

*Testate* means the decedent executed a will before his or her death.

*Trust property* means real or personal property, or an interest therein, which the United States holds in trust for the benefit of an individual Indian.

*Will or last will and testament* means a written testamentary document, including any properly executed written changes, called codicils, which was signed by the decedent and was attested by two disinterested adult witnesses, that states who will receive the decedent's trust or restricted property.

#### § 4.202 General authority of OHA deciding officials.

An OHA deciding official will, except as otherwise provided in § 4.205(b) and 25 CFR 15.203 and 15.206, determine the heirs of any Indian who dies intestate possessed of trust property; approve or disapprove the will of a deceased Indian disposing of trust property; accept or reject any full or partial renunciation of interest in both testate and intestate proceedings; allow or disallow creditors' claims against the estate of a deceased Indian; and decree the distribution of trust property to heirs and devisees, including the partial distribution to known heirs or devisees where one or more potential heirs or devisees are missing but not presumed dead, after attributing to and setting aside for such missing person or persons the share or shares such person or persons would be entitled to if living. An OHA deciding official will determine the right of a tribe to take any inherited interest and the fair market value of the interest taken in appropriate cases as provided by statute. He or she will review each case de novo, hold hearings as necessary or appropriate, and issue decisions in matters appealed from decisions of BIA deciding officials. Administrative law judges will also hold hearings and issue recommended decisions in matters referred to them by the Board in the Board's consideration of appeals from administrative actions of BIA officials.

#### 43 CFR Subtitle A (10-1-03 Edition)

#### DETERMINATION OF HEIRS; APPROVAL OF WILLS; SETTLEMENT OF INDIAN TRUST ESTATES

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

#### § 4.203 Determination as to non-existent persons and other irregularities of allotments.

(a) An OHA deciding official will hear and determine whether trust patents covering allotments of land were issued to nonexistent persons, and whether more than one trust patent covering allotments of land had been issued to the same person under different names and numbers or through other errors in identification.

(b) If an OHA deciding official determines under paragraph (a) of this section that a trust patent issued to an existing person and/or that separate persons received the allotments under consideration and any one of them is deceased, without having had his or her estate probated, the OHA deciding official must proceed as provided in § 4.202.

(c) If an OHA deciding official determines under paragraph (a) of this section that a person did not exist or that more than one allotment was issued to the same person, the OHA deciding official must issue a decision to that effect, giving notice thereof to parties in interest as provided in § 4.240(b).

#### § 4.204 Presumption of death.

(a) An OHA deciding official will receive evidence on and determine the issue of whether any person, by reason of unexplained absence, is to be presumed dead.

(b) If an OHA deciding official determines that an Indian person possessed of trust property is to be presumed dead, the OHA deciding official must proceed as provided in § 4.202.

#### § 4.205 Escheat.

An OHA deciding official will determine whether any Indian holder of trust property died intestate without heirs and—

(a) With respect to trust property other than on the public domain, order the escheat of such property in accordance with 25 U.S.C. 373a.

(b) With respect to trust property on the public domain, submit to the Board of Indian Appeals the records thereon, together with recommendations as to the disposition of said property under 25 U.S.C. 373b.

**§ 4.206 Determinations of nationality or citizenship and status affecting character of land titles.**

In cases where the right and duty of the Government to hold property in trust depends thereon, an OHA deciding official will determine the nationality or citizenship, or the Indian or non-Indian status, of heirs or devisees, or whether Indian heirs or devisees of U.S. citizenship are of a class as to whose property the Government's supervision and trusteeship have been terminated in current probate proceedings or in completed estates after reopening such estates under, but without regard to the 3-year limit set forth in § 4.242.

**§ 4.207 Compromise settlement.**

(a) If during the course of the probate of an estate it develops that an issue between contending parties is of such nature as to be substantial, and it further appears that such issue may be settled by agreement preferably in writing by the parties in interest to their advantage and to the advantage of the United States, such an agreement may be approved by the OHA deciding official upon findings that:

(1) All parties to the compromise are fully advised as to all material facts;

(2) All parties to the compromise are fully cognizant of the effect of the compromise upon their rights; and

(3) It is in the best interest of the parties to settle rather than to continue litigation.

(b) In considering the proposed settlement, the OHA deciding official may take and receive evidence as to the respective values of specific items of property. Superintendents and irrigation project engineers must supply all necessary information concerning any liability or lien for payment of irrigation construction and of irrigation operation and maintenance charges.

(c) Upon an affirmative determination as to all three points specified, the OHA deciding official will issue such

final order of distribution in the settlement of the estate as is necessary to approve the same and to accomplish the purpose and spirit of the settlement. Such order will be construed as any other order of distribution establishing title in heirs and devisees and will not be construed as a partition or sale transaction within the provisions of 25 CFR part 152. If land titles are to be transferred, the necessary deeds must be prepared and executed at the earliest possible date. Upon failure or refusal of any party in interest to execute and deliver any deed necessary to accomplish the settlement, the OHA deciding official will settle the issues and enter an order as if no agreement had been attempted.

(d) OHA deciding officials are authorized to approve all deeds or conveyances necessary to accomplish a settlement under this section.

**§ 4.208 Renunciation of interest.**

Any person 21 years or older, whether of Indian descent or not, may renounce intestate succession or devise of trust or restricted property, wholly or partially (including the retention of a life estate), by filing a signed and acknowledged declaration of such renunciation with the OHA deciding official prior to entry of the final order by the OHA deciding official. No interest in the property so renounced is considered to have vested in the heir or devisee and the renunciation is not considered a transfer by gift of the property renounced, but the property so renounced passes as if the person renouncing the interest has predeceased the decedent. A renunciation filed in accordance herewith will be considered accepted when implemented in an order by an OHA deciding official and will be irrevocable thereafter. All disclaimers or renunciations heretofore filed with and implemented in an order by an OHA deciding official are hereby ratified as valid and effective.

COMMENCEMENT OF PROBATE  
PROCEEDINGS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.